HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 389 (S/S) 2003

1. Arun Prakash S/o late Sri Om Prakash
   R/o 201, Masatti Niwas, Mazra,
   District Dehradun,
2. Joginder Singh S/o Sri Gulab Singh,
   R/o Kotdwar,
   District Pauri Gahrwal. ------Petitioners.

Vs.

1. State of Uttaranchal through Secretary,
   Social Welfare, Uttaranchal, Dehradun,
2. Director, Social Welfare Department,
   Uttaranchal, Dehradun,
3. Addl. Director, Social Welfare Deptt.
   Dehradun,
4. District Social Welfare Officer,
   District Dehradun. ----Respondents.

Sri Rakesh Thapaliyal, learned counsel for the petitioner.
Learned Standing Counsel for the State/respondents,

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rakesh Thapliyal, leanred counsel for the petitioners and learned Standing Counsel for the State/respondents.

By means of this writ petition, the petitioners have challenged the order dated 6th June 2003 passed by the Director, Social Welfare Department, Uttaranchal Dehradun by which the petitioners were allowed to work for 89 days on a consolidate salary of Rs. 2,550/-per month from the date of passing of the order.

Submission of the petitioners is that though, there are vacancies in the Department however, the petitioner were engaged as Calls IV employees on a consolidate salary of Rs. 2,500/- per month though the engagement was against the

substantive vacancy. The said appointment was made by the respondents vide order dated 26.12.2001. The petitioner are performing their duties to the utmost satisfaction to their superiors and they are eligible to be appointed on Class IV post, even then the petitioners have been appointed on contractual basis. In spite of the fact that the appointed on contractual basis. In spite of the fact that the appointment order was not for a specific period, the Addl. Director Social Welfare, Uttaranchal, Dehradun pssed order on 13.03.2002 terminating the services of the petitioners without assigning any reason. The said order of Add. Director was lateron cancelled by the Director Vide its order dated 6th June 2003 and the petitioners were further permitted to continue for 89 days on consolidate salary of Rs. 2,550/- month.

The respondents have filed counter affidavit. In the counter affidavit the only stand taken by the respondents is that the petitioner were not appointed against the substantive vacancies. It is nowhere stated in the counter affidavit that no posts were vacant there or the post on which the petitioners were appointed, were created for a particular period. The respondents have filed a very sketchy counter affidavit.

An application has been moved by the respondents to vacate the stay order passed by this Court on 11.07.2003 or the writ petitioner may be decided in term s of the interim order passed by this Court.

It is not disputed that the petitioners are still working in the Department, through on the basis of the stay order passed by this Court. The petitioners were appointed by the competent authority i.e. Director Social Welfare, Uttaranchal, Dehradun. It

is nowhere stated in the counter affidavit that there is not post vacant in the Department on the contrary; in the writ petition as well as in the rejoinder affidavit, the petitioners have stated that there is scarcity of employees in the Department and post are vacant. There are no allegations against the work and conduct of the petitioners.

For the reasons stated above and in the circumstances of the case it is provided that if the post of Class IV employees are available in the Department and if the work and conduct of the petitioner is found upto the mark, they shall be permitted to continue till dully selected persons join on the posts and shall be paid pay-scale admissible to the Class IV employee in accordance with law.

The writ petition is disposed of accordingly.

(M.M. Ghildiyal, J.)

October 28, 2005:

NCM